

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Power Company

-vs-

M.J.M. Electric Cooperative, Inc.

**Complaint under the Electric Supplier Act
220 ILCS 30/1 et seq.**

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00-0382

ORDER

By the Commission:

On May 26, 2000, Illinois Power Company ("IP") filed a complaint with the Illinois Commerce Commission ("Commission") against M.J.M. Electric Cooperative, Inc. ("MJM") under the Electric Supplier Act ("Act"), 220 ILCS 30/1 et seq. In the complaint, IP alleged that MJM was improperly serving ten customers in IP's service territory. IP sought a Commission order stating that IP had the exclusive right to provide electrical service to the ten customers.

Pursuant to due notice, status hearings were held in this matter before a duly authorized Hearing Examiner of the Commission at its offices in Springfield on July 6, August 18, October 2, and October 27, 2000. Notice of the first two status hearings was served on the ten customers. Counsel for IP and MJM entered appearances at the status hearings. None of the ten customers entered an appearance and no petitions to intervene were received. Commission Staff did not participate in this proceeding. The record was marked "Heard and Taken" at the end of the October 27 status hearing.

On July 17, MJM filed an answer to the complaint, which included five affirmative defenses. On September 13, IP filed an answer to MJM's affirmative defenses and a motion to dismiss its complaint without prejudice. MJM opposed dismissal of the complaint against it and instead filed on October 20 a response setting forth its reasons as to why the complaint should proceed. On the same date MJM also filed a counter complaint seeking a Commission order that MJM has the right to serve the ten customers identified in IP's complaint as well as three additional customers which MJM is already serving. IP filed a reply in support of its motion to dismiss on October 27. The Hearing Examiner's Proposed Order dismissing the complaint without prejudice was served on the parties. Only IP filed a Brief on Exceptions, which recommended that the Order address MJM's counter complaint. MJM did not file a Brief in Reply to Exceptions. IP's Brief on Exceptions was considered in the preparation of this Order.

At issue, under both the complaint and counter complaint, are 13 customers served by MJM near Brighton, Illinois, which is along the border of Jersey and Macoupin counties. Although IP no longer wants to pursue its complaint, MJM argues that IP is not entitled to have its complaint dismissed. MJM contends that the rules of the Commission do not expressly provide for a voluntary dismissal of a complaint questioning the right of an electric supplier to provide electric service to certain customers. MJM acknowledges that Section 2-1009 of the Code of Civil Procedure, 735 ILCS 5/1-101 et seq., allows IP to voluntarily dismiss without prejudice a complaint that IP files with the circuit court against MJM, provided the proceeding has not gone to hearing. The Code of Civil Procedure, however, is not applicable to actions of the Commission, according to MJM. Moreover, because Section 200.190 of the Commission's rules does not expressly authorize a complainant to move to dismiss its own complaint, MJM maintains that IP is prohibited from doing so in the present case.

Furthermore, MJM argues that the question which gave rise to IP's original complaint is still outstanding and must be resolved. MJM reports that the present dispute stems from a mistake regarding the location of the territorial boundary line established by the Service Area Agreement between MJM and IP. Until this question is resolved, MJM states that customers will be left in jeopardy since IP could at

any time again question the validity of MJM's electric service to the 13 customers. Future customers are also in jeopardy, according to MJM, because when future customers request electric service, both MJM and IP will be questioning the right of the other to provide such electric service, which risks delaying service to that customer. Dismissing IP's complaint without prejudice, MJM contends, leaves the boundary line dispute in limbo.

In reply to MJM's response to its motion to dismiss, IP notes that its motion to dismiss does not rely on the Code of Civil Procedure. IP also observes that Section 200.190(a) of the Commission's rules allows motions to be presented requesting "such other relief ... as may be appropriate." Its motion to dismiss its own complaint without prejudice, IP contends, is entirely appropriate. IP concludes by stating that if MJM believes certain issues need to be addressed, MJM can initiate a new docket.

In addressing whether IP should be able to dismiss its own complaint, the Commission is perplexed by MJM's discussion of the Code of Civil Procedure in light of the fact that Section 200.190(a) allows motions to be presented requesting relief other than that specifically listed therein. Certainly, IP may move under Section 200.190 to dismiss its complaint against MJM if IP no longer wishes to pursue its complaint. The fact that the record is unclear as to why IP seeks to dismiss its complaint does not prevent IP from doing so. Equally puzzling to the Commission is how MJM can be so certain that IP will again question MJM's service to the identified customers. Although IP may very well do so, the record lacks the certainty expressed by MJM. What is clear from the record is that IP does not wish to contest, at least in this docket, MJM's current provisioning of electric service to 13 specific customers. While IP may challenge MJM's service to these customers in the future and MJM may initiate a new docket raising the same or similar issues, the fact remains that neither MJM nor IP are currently disputing service to the customers at issue. Because MJM wants to serve the 13 customers and is doing so without opposition, and because service to no other customers is in dispute, the Commission concludes that IP's motion to dismiss its own complaint without prejudice should be granted. In the absence of an actual dispute, a Commission order in this docket would constitute a declaratory ruling which would not be appropriate in this proceeding. For the same reasons, the Commission also finds that MJM's counter complaint should be dismissed without prejudice as well.

The Commission, having reviewed the record and being fully advised in the premises, is of the opinion and finds that:

- (1) MJM and IP are both electric suppliers within the meaning of the Act;
- (2) the Commission has jurisdiction over MJM and IP and the subject matter of this docket;
- (3) the statements of fact and law set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (4) IP's motion to dismiss its own complaint without prejudice should be granted; and
- (5) MJM's counter complaint should be dismissed without prejudice.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Illinois Power Company's motion to dismiss its complaint against M.J.M. Electric Cooperative, Inc. without prejudice is hereby granted.

IT IS FURTHER ORDERED that M.J.M. Electric Cooperative, Inc.'s counter complaint is dismissed without prejudice.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is subject to the Administrative Review Law.

By order of the Commission this 6th day of December, 2000.

(SIGNED) RICHARD L. MATHIAS

Chairman

(S E A L)